

ALERT

EEOC & DOJ Issue Guidance to Workers on Discrimination Related to DEI Programs

March 20, 2025

On March 19, 2025, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ), jointly issued technical assistance documents “focused on educating the public about unlawful discrimination related to ‘diversity, equity, and inclusion’ (DEI) in the workplace.”

The first document, issued jointly by the DOJ and EEOC, entitled What To Do If You Experience Discrimination Related to DEI at Work, encourages individuals to file charges of discrimination with the EEOC if they believe they have experienced DEI-related discrimination. The second document, issued solely by the EEOC and titled What You Should Know About DEI-Related Discrimination at Work, is an FAQ-style technical assistance document that generally explains how Title VII of the Civil Rights Act of 1964 (Title VII) applies to DEI-related discrimination according to the EEOC.

The documents align closely with policy positions and enforcement priorities announced in President Trump’s various DEI Executive Orders and suggest that the EEOC and its Acting Chair, Andrea Lucas (who was appointed to the Commission by President Trump in his first term and who was promoted to the position of Acting Chair by President Trump shortly after his recent inauguration), will continue to align the EEOC with the Trump Administration’s policies and views surrounding DEI.

The technical assistance documents acknowledge that DEI is a “broad term that is not defined” in Title VII of the Civil Rights Act of 1964. Notwithstanding the lack of definition in the primary federal law governing employment discrimination in the workplace, the agencies explain that DEI policies may be unlawful if they are “motivated—in

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whole or in part—” by an employee’s protected characteristic, such as race or sex, or if they create quotas or attempt balancing of the workforce based on protected traits.

The documents provide the agencies’ position concerning numerous employer actions that might create DEI-related discrimination claims, including:

- Exclusion from mentorship, fellowship, or internship programs based on protected traits.
- Limiting who can join employee resource or affinity groups based on protected traits.
- Segregated presentation of trainings, even where the offerings or benefits provided to all participant groups are the same.
- DEI trainings that create a hostile work environment based on content, design, or execution of the training.
- Retaliating against workers who oppose DEI programs or trainings.
- Selection for interviews, including placement or exclusion from a candidate slate or pool based on protected traits (e.g., the “Rooney Rule”).

According to Acting Chair Lucas, “[f]ar too many employers defend certain types of race or sex preferences as good, provided they are motivated by business interests in ‘diversity, equity, or inclusion.’ But no matter an employer’s motive, there is no ‘good,’ or even acceptable, race or sex discrimination.”

The technical assistance documents also detail how to file a charge of discrimination with the EEOC, who may file a charge, and the entities that charges may be potentially filed against. The documents also clarify that the federal anti-discrimination laws protect all workers and not just individuals who are part of a minority group.

What the Guidance Means for Private Employers and Federal Government Contractors

Technical assistance documents are resources designed to help job applicants, employees, employers, and others understand how agencies analyze and apply the law. However, they do not create new legal standards and cannot be relied upon with the force of law like a statute or regulation. Although the technical assistance documents issued March 19 do not have the force of law, they provide the first formal picture of what the Trump Administration views as an “illegal” DEI policy or practice and signal where the EEOC and DOJ are focusing their enforcement efforts.

The technical assistance documents provide some clarity for federal government contractors currently working to review and revise their practices and policies before the April 21, 2025 deadline to align with the President’s directives concerning DEI in federal contracting (which we discussed in more detail here). For private employers who do not contract with the federal government, the technical assistance documents provide a rubric for reviewing or altering existing policies or practices to avoid potential legal risk. The documents also appear to demonstrate how the DOJ might view supplier diversity and other corporate DEI programs that may consider race, gender, or other protected traits outside of the employment context.

Now more than ever, it is imperative that federal government contractors, and private companies outside of the federal contracting space, engage in a privileged review of their DEI initiatives and policies to ensure compliance with all relevant federal laws and to understand nuances between agency guidance and interpretation of those laws that may create risk surrounding programs and practices previously believed to be lawful.

Wiley has a team of skilled practitioners with knowledge and experience in relevant areas (including Employment & Labor, Litigation, Government Contracts, and White Collar Defense & Government Investigations) to help clients navigate changes to DEI and related federal policies. Please contact our DEI Counseling and Support Team with questions about the lawfulness of existing DEI-related programs, policies, or practices, or if you need assistance with civil compliance investigations, litigation defense, or other matters arising from these EOs.

To stay informed on all the directives and announcements from the Trump Administration, please visit our dedicated resource center below.

Wiley's Trump Administration Resource Center